

Antitrust Policy and Guidelines

Introduction

The antitrust laws are designed to insure that business is conducted in an open, competitive atmosphere and that competition is not unreasonably or unfairly restricted. These laws prohibit any agreement, combination, or conspiracy that may result in an unreasonable restraint of trade or an injury to competition. Thus the following types of agreements, whether by the Association of New Jersey Chiropractors or its members, are deemed to constitute anti-competitive behavior.

- Agreements to fix prices, including agreements on the terms and conditions which affect the price of a product or service;
- Agreements to control or limit the production of a product or service;
- Agreements to engage in a group boycott or a refusal to deal with certain competitors, suppliers, or patients;
- Agreements to allocate or divide markets and/or patients.

In addition, membership requirements and disciplinary procedures in an association such as the Association of New Jersey Chiropractors create antitrust obligations and risks. Membership requirements must be reasonable, non-discriminatory, and applied in a uniform manner. They should be substantially related to the association's purpose. Provisions for imposing disciplinary action must protect the member's due process rights and, like membership criteria, must be uniformly followed.

Finally, the tying by a dominate market player on the purchase or sale of one product or service to the purchase or sale of another product or service can be an illegal act which unfairly and unreasonably restrains competition.

Violations of these antitrust laws may result in civil or criminal proceedings, or both. Treble damages and attorney's fees become part of the recovery for those persons who have been harmed by unfair and illegal anti-competitive actions.

The Association of New Jersey Chiropractors is comprised of competitors who have come together for a common business purpose. Because the Association of New Jersey Chiropractors' members are competitors, the nature and extent of the activities of both the Association of New Jersey Chiropractors and its members are closely scrutinized by the courts and regulatory agencies. Moreover, the actions of the members of an association such as the Association of New Jersey Chiropractors can cause the association itself to be charged with anti-competitive behavior, even if the association was unaware of its members' actions. As a result, strict compliance with the antitrust laws by both the Association of New Jersey Chiropractors and its members is essential to safeguard against possible anti-competitive actions that could result in substantial costs and damages.

Policy

It is the policy of the Association of New Jersey Chiropractors to comply strictly and in all respects with the antitrust laws, state and federal. It is also the policy of the Association of New Jersey Chiropractors to educate and encourage its members to adhere strictly and in all respects to federal and state antitrust laws.

Prohibited Activities By Members

Meetings are a normal, legitimate function of associations like the Association of New Jersey Chiropractors. However, because association meetings bring together competitors, they must be conducted with a view toward future antitrust scrutiny. To avoid possible liability under the antitrust laws, the following broad topics should not be discussed by any member while participating in Association of New Jersey Chiropractors activities:

- Do not discuss, or engage in any form of conduct from which it may be argued that a member discussed, fixing the price or fee for chiropractic or related services. The antitrust laws make any agreement, formal or informal, that has a substantial impact upon price illegal *per se*, regardless of the circumstances or effect of competition. Price fixing in its broadest terms covers any agreement to raise, stabilize, or lower the prices or fees which members charge for their services. Agreements relating to discounts, allowances, credit terms, rebates, future business, or the terms or conditions of sales and services are included within price fixing. Price fixing may occur between competitors or between suppliers and customers. It can be either express or implied.
- Do not share information regarding current or future prices or fees for service because such actions can have a substantial impact on price and therefore be deemed price fixing. This prohibition includes the various components of the cost of an appraisal report that might affect or impact current or future prices or fees.
- Do not discuss refraining from selling certain chiropractic products or services and do not discuss customers or groups of customers to which certain chiropractic products and services are not be sold or provided. Any agreement to control or limit the number of chiropractic products and services is *per se* illegal under the antitrust laws.
- Do not discuss boycotting or refusing to deal with certain competitors, suppliers, patients, or groups of suppliers or patients. Any attempt by Association of New Jersey Chiropractors members to use the collective power of the association to boycott a competitor, supplier, or a patient will violate the antitrust laws. Such a boycott is *per se* illegal when it cuts off access to a supply, facility, or market necessary to enable the boycotted firm or individual to compete. Discussion concerning the pros and cons of further dealings with any common competitor, supplier or patient must be avoided at all Association of New Jersey Chiropractors functions.
- Do not discuss allocating patients, territories, or markets in which Association of New Jersey Chiropractors members sell, may sell or refuse to sell their products and services. Agreements among Association of New Jersey Chiropractors members to divide or allocate patients or markets are *per se* violations of the antitrust laws. Even an informal agreement by which one member promises to stay out of or to avoid another member's territory, or promises to refrain from doing business with certain patients and/or customers, or promises not to offer certain types of chiropractic services constitutes an antitrust violation. As with price fixing cases, no justification or defenses are recognized in the law. Association of New Jersey Chiropractors meetings cannot be used by members to discuss and determine when, where and to whom members will sell or offer their chiropractic products and services.
- Do not discuss costs, inventories, product capacities, profits, profit margins, market studies or surveys, market shares, or other current or future business matters which may affect competition. An anti-competitive agreement does not have to be express and can be established by circumstantial evidence such as the subsequent behavior of the participants at the meeting.

Permitted Activities

The following areas of discussion can be undertaken by members participating in Association of New Jersey Chiropractors functions without raising substantial antitrust concerns:

- Discussion of common problems and challenges so long as the purpose is not to eliminate competition or encourage uniform action.
- Discussion of future business opportunities and plans so long as it does not include prices or bids.
- Discussion of problems with certain types of patients or suppliers so long as the focus is not on boycotting or refusing to deal with such patients, patient groups or suppliers.
- Discussion of risks relating to certain types of patients or suppliers so long as there is not an attempt to fix prices or the terms of doing business.
- Discussion of the policies or practices of certain patients, patient groups, or suppliers so long as there is no threat, direct or indirect, to act jointly to enforce changes to those policies or practices.

- Discussion of historical prices, fees, and cost data so long as this information is not then used to project agreed upon or uniform future prices, fees, or costs.
- Discussion of joint or unified positions for purposes of dealing with governmental bodies and regulatory agencies.
- Discussion of the agenda or the minutes of prior meetings because minutes must accurately reflect the actions taken at the meetings and the agenda that was followed.

Any questions about the Association of New Jersey Chiropractors' Antitrust Policy and Guidelines should be directed to Amy Boright Porchetta amyboright@anjc.info